

# MONTANA DEPARTMENT OF JUSTICE

## Instructions for Tobacco Product Manufacturer Certificate of Compliance

### GENERAL INSTRUCTIONS

#### Who is required to file this Certification?

Tobacco Product Manufacturers (TPMs) whose cigarettes are sold in Montana, whether directly or through any distributor, retailer or similar intermediary, are required to complete and file this form.

This Certification is in addition to the Montana Certificate of Escrow Deposit by Non-Participating Manufacturer (NPM) or Quarterly Certificate of Escrow Deposit by NPM required by Montana's Tobacco Product Reserve Fund Statute (Mont. Code Ann. § 16-11-403) and implementing regulations (Administrative Regulations of Montana §§ 23.18.201 through 210).

The answers provided in the Certification, when completed, must be reviewed and signed by an officer with the authority to bind the Applicant company (Applicant).

#### When is this Certification due?

TPMs that intend to sell cigarettes in Montana shall file a Certification and qualify for listing on the Directory prior to any sales in Montana. TPMs listed on the Directory must file this form on or before April 30 each year.

Supplemental Certifications: In completing a Supplemental Certification, Applicant must check the "Supplemental" box at the top of page one, **enter only the new or changed information, then sign and date the Supplemental Certification form**. A TPM shall file a Supplemental Certification no later than 30 days prior to any change in a fabricator for any Brand Family or any addition to or modification of its Brand Families by executing and delivering the Supplemental Certification to the Attorney General. In all other circumstances in which information provided on the Certification becomes inaccurate, a Supplemental Certification must be filed within 30 days after the information becomes inaccurate.

#### Definitions:

- (a) "Affiliate" means a person who directly or indirectly owns or controls, is owned or controlled by, or is under common ownership or control with, another person, as defined in Mont. Code Ann. § 16-11-402(2).
- (b) "Brand Family" means all styles of cigarettes sold under the same trademark and differentiated from one another by means of additional modifiers, including, but not limited to, "menthol," and includes any brand name, alone or in conjunction with any other word, trademark, logo, symbol, motto, selling message, recognizable pattern of colors, or any other indicia of product identification identical or similar to, or identifiable with, a previously known brand of cigarettes.
- (c) "Cigarette" has the same meaning as in Mont. Code Ann. §16-11-402(4). Roll-your-own (RYO) tobacco is included in the definition of cigarette under Mont. Code Ann. § 16-11-402(4).
- (d) "Directory" means the listing of all TPMs that have provided current and accurate certifications conforming to the requirements of Montana's Tobacco Product Reserve Fund Statute and all Brand Families that are listed in such certifications.
- (e) "MSA" means the "Master Settlement Agreement," as defined in Mont. Code Ann. § 16-11-402(5).
- (f) "Non-Participating Manufacturer," or "NPM," means any TPM that is not a Participating Manufacturer.
- (g) "Participating Manufacturer" has the same meaning as in subsection II(j) of the MSA.

- (h) "Person" means an individual, partnership, committee, association, corporation, or any other organization or group of persons.
- (i) "Qualified Escrow Fund" has the meaning as in § 16-11-402(6).
- (j) "Reserve Fund Statute" means Mont. Code Ann. § 16-11-401 through 512.
- (k) "Tobacco Product Manufacturer" or "TPM" has the meaning as in § 16-11-402(9).
- (l) "Units Sold" has the meaning as in § 16-11-402(10).
- (m) "Wholesaler" has the same meaning as in § 16-11-502(10).

**This Certification and all other required forms must be completed in English. For all attachments required by the Certification, if the original document is in a language other than English, a true and correct translation into English must be attached as well.**

**All attachments to this Certification must indicate which questions they correspond to.**

**If any section of this Certification is not applicable to your company, be sure to check the box "Not Applicable" where relevant.**

**ANY PERSON WHO MAKES AN ASSERTION IN THIS CERTIFICATION THAT HE OR SHE KNOWS IS FALSE REGARDING A MATERIAL MATTER IS GUILTY OF A MISDEMEANOR PUNISHABLE BY IMPRISONMENT OR A FINE, OR BOTH.**

## **SPECIFIC INSTRUCTIONS**

### **PART I. GENERAL BUSINESS AND OWNERSHIP INFORMATION**

**Questions 3-6:** Montana Code Annotated § 16-11-402(9) sets forth three circumstances under which an entity is a TPM. Those circumstances are individually set out in questions 3, 4, and 5. If Applicant answered "No" to questions 3, 4 and 5, Applicant must provide an explanation for its assertion that it is a TPM in its response to question 6.

### **PART II. BRAND FAMILY IDENTIFICATION**

**Brand Family Identification:** Identify by Brand Family all of the cigarettes that the TPM intends to sell in Montana, whether directly or through any wholesaler, distributor, retailer, or similar intermediary, and seeks to have included in the Directory. Only the brands identified may be included in the Directory. A PM shall list all of its Brand Families. By listing a Brand Family, the PM affirms that the Brand Family is deemed to be its cigarettes for the purpose of calculating its payments under the MSA for the relevant year. The PM shall update such list at least 30 days prior to any addition to or modification of its Brand Families by executing and delivering a Supplemental Certification to the Attorney General.

An NPM shall: (i) List all of its Brand Families and the number of units sold of each Brand Family that were sold in Montana during the preceding calendar year; (ii) Identify by an asterisk any Brand Family sold in Montana during the preceding calendar year that is no longer being sold in Montana as of the date of the Certification; and (iii) Provide the complete name and address of every TPM that manufactured a Brand Family described in (i) above in the preceding calendar year. The NPM shall update such list at least 30 days prior to any addition to or modification of its Brand Families by executing and delivering a supplemental TPM Certification to the Attorney General. By listing a Brand Family, the NPM affirms that the Brand Family is deemed to be its cigarettes for the purpose of calculating its reserve fund deposits pursuant to Mont. Code Ann. § 16-11-403 and implementing regulations.

## PART III. ADDITIONAL BUSINESS AND OWNERSHIP INFORMATION (NPM Applicants Only)

### 1. Organizational Documents to be Attached:

If Applicant is a:	Attach to Certification:
Partnership or Association	Current copy of articles, if any, OR the certificate required to be filed by any state, country, or municipality.
Corporation	1. Current copy of the corporate charter OR certificate of corporate existence or incorporation. This copy must be executed by the appropriate state officer for the jurisdiction in which incorporated. 2. Extracts of stockholders' meetings, bylaws, directors' meetings or other documents that list the officers authorized to sign documents or otherwise act on behalf of the corporation. The accuracy of the copy must be certified by an appropriate officer of the corporation.
Limited Liability Company or other Business Organization	Current copy of the business document(s) filed with a state, county, or municipality when such filing is required. The copy must show that it was filed with the appropriate government agency. A limited liability company must provide an accurate copy of its operating agreement.

**2. Affiliates.** Identify any Affiliate that also manufactures, imports, distributes, or sells cigarettes or other tobacco products in Montana by completing the table on the application. For purposes of this Certification, the term "own" means ownership of an equity interest, or the equivalent thereof, of 10 percent or more. List the names of the brands and the affiliate in the first two columns. List the type of business by writing in the third column (Type of Business): "m" for manufacturer, "i" for importer, "d" for distributor, and "w" for wholesaler.

## PART IV. MARKETING AND DISTRIBUTION INFORMATION (NPM Applicants Only)

### 1. Brands made since 1999.

### 2. Distributors, Wholesalers and Retailers.

**3. Agreements with Participating Manufacturers.** Identify every agreement between Applicant and any PM or Affiliate of a PM which relates to the making, importing, distribution, transportation or sale of a Brand Family. List the Brand Family and the name, address, and phone number of the PM involved in any agreement. For each Brand Family, describe the agreement or arrangement with any PM or Affiliate of a PM in the making, importing, distribution, transportation or sale of the Brand Family, and provide the name and address of the PM(s), subsidiary(ies), Affiliate(s) or partner(s). A list of the PMs is available on the NAAG website at <http://www.naag.org>. Attach a copy of any written contract(s) and/or agreement(s).

**4. Agreements Regarding Compliance with the MSA.** List every Brand Family that is the subject of an agreement regarding compliance with the MSA and the name, address and phone number of the PM involved in such agreement(s). Attach a copy of any written contract(s) and/or agreement(s).

**5. Agreements Regarding Compliance with the Reserve Fund Statute.** List every Brand Family that is the subject of an agreement regarding compliance with the NPM Reserve Fund Statute and the name, address and phone number of the person or entity with whom Applicant has a contractual arrangement and/or agreement concerning compliance with the NPM Reserve Fund Statute. Attach a copy of any written contract(s) and/or agreement(s).

## PART V. MANUFACTURING AND COMPLIANCE INFORMATION (NPM Applicants Only)

**1. Internet or Mail Order Sales.** If Applicant intends to sell any cigarettes by mail order or through the internet, list and describe: (a) any website advertising the tobacco, (b) the address from where the cigarettes will be shipped, and (c) the total sales in Montana in the previous year.

**ATTACH COPIES OF JENKINS ACT REPORTS.** If Applicant is applying for listing on Montana's Directory for the first

time, attach copies of all reports, if any, filed with the Montana Department of Revenue to comply with the Jenkins Act (Chapter 10A of Title 15 of the U.S. Code, § 375 et seq.) for sales in the preceding 12 months. If Applicant has already been listed on Montana's Directory, but is applying to list other or new Brand Families, attach copies of the annual Certification of Compliance and the Jenkins Act reports for sales of the already listed Brand Families for the period of time reported in Applicant's annual Certification of Compliance.

## **PART VI. DISCLOSURE OF ENFORCEMENT ACTIONS TO MONTANA PURCHASERS (NPM Applicants Only)**

## **PART VII. NPM APPLICANT CERTIFICATION**

### **1. AGENT FOR SERVICE OF PROCESS**

Certify whether the NPM is: (1) domiciled in the State of Montana; (2) a non-resident or foreign NPM that has registered to do business in Montana as a foreign corporation or business entity; or (3) a NPM that has appointed a resident agent for service of process pursuant to Mont. Code Ann. § 16-11-503 on whom all process, and any action against it concerning or arising out of the enforcement of Montana's Tobacco Product Reserve Fund Statute and implementing regulations, may be served in any manner authorized by law.

### **Where must this Certification be filed?**

**Mail the original Certification and a complete copy of all required forms and documents to:**

Montana Attorney General's Office:

Montana Attorney General's  
Office  
Tobacco Enforcement  
P.O. Box 201401  
Helena, MT 59620-1401

AND

Montana Department of Revenue:

Mr. Neil Peterson  
Attn: Mr. Lee Baerlocher  
P.O. Box 5805  
Department of Revenue  
Helena, MT 59604-5805